

Madam Speaker, I yield to the good gentleman from the First Congressional District of the great State of Texas (Mr. GOHMERT).

Mr. GOHMERT. Madam Speaker, I appreciate my friend from Washington, who is a great Member of Congress and who knows exactly some of the damage that the Endangered Species Act has done. We certainly have experienced that in Texas.

We did, in the House, modernize the Endangered Species Act in my first term, 2005 and 2006, and it was quite an education to me because I thought the Endangered Species Act was all about trying to save endangered species. But I got an education. I found out that was not what the Endangered Species Act was about because if it was just about saving endangered species, we would have saved a lot more than 1, 2, and 3 percent of the endangered species.

One of the things that we did in that bill that I thought was common sense because I know there are landowners—I hear about these situations—and that is what they rely on to feed their families. There is a doctrine that is not an official doctrine known as shoot, shovel, and shut up. Somebody sees an endangered species, and they are scared if somebody sees it, then the use of their land will be taken away, and they will no longer be able to provide for their family.

Even though I believe that it is a taking anticipated under the Bill of Rights, which requires remuneration, that is not what the courts have found. But in that modernized bill back in my first term, we said: Look, if you are going to tell a landowner he can't use his land, or she can't use her land, then you ought to pay them because you have taken away the use.

I was shocked to find that there were people on the other side of the aisle who said: No, no, no. We don't want that in there.

But that will save species; people will be more willing to volunteer that they found an endangered species.

The answer was: Well, they shouldn't even have that land anyway.

I appreciate the efforts of the gentleman from Washington. Hopefully, we can work together because we do indeed care about endangered species, and modernization will allow us to save a whole lot more than 1, 2, or 3 percent.

Mr. NEWHOUSE. Madam Speaker, I thank Mr. GOHMERT. The gentleman knows full well from his time serving on the House Natural Resources Committee just how ineffective the current ESA is performing. I thank the gentleman for his leadership and for spearheading the SAVES Act, as he described, to enhance our conservation measures for endangered species.

Madam Speaker, you just heard from a variety of members from the Congressional Western Caucus who represent not only rural districts in the West but also communities across the Nation, from Montana to Missouri,

from South Carolina to California. Their message was clear: We must modernize the ESA. Doing so will be good for the species. It will be good for communities. It will be good for taxpayers. And it will be good for our economy.

A few Members were unable to join us tonight. I want to list some of the bills that they are sponsoring: Congresswoman CHENEY's Increasing Access and Multiple Use Act, Congressman WESTERMAN's PETITION Act, Congressman MIKE JOHNSON's Critical Habitat Improvement Act, Congressman YOUNG's LAMP Act, Congressman STEWART's Critical Infrastructure Act, Congressman CALVERT's FISH Act, Congressman MCCLINTOCK's Endangered Species Transparency and Reasonableness Act, and Congressman BUCK's Threatened Species Protection Improvement Act.

All of these bills are critical for a comprehensive update to ensure the ESA accomplishes what it was designed to do: recover threatened and endangered animals and wildlife.

This package is supported by dozens of organizations, including the National Rural Electric Cooperative Association, the U.S. Chamber of Commerce, the National Association of Counties, the Family Farm Alliance, the National Endangered Species Act Reform Coalition, the American General Contractors Association, the Independent Petroleum Association of America, the National Association of Home Builders, the Western Energy Alliance, the United Snowmobile Association, the National Mining Association, American Agri-Women, and the National Cotton Council, amongst many, many, many others.

As we continue to push for reforms to the ESA in the people's House and work with the administration and the White House to support the Department of the Interior's updated implementation regulations, I hope that my colleagues will join us in recognizing that we can do so much better to recover our Nation's magnificent flora and fauna.

The Western Caucus will remain at the forefront of this effort. A 3 percent success rate is failing our wildlife across this beautiful country. We must do better.

Madam Speaker, I yield back the balance of my time.

WHY IMPOUNDMENT CONTROL ACT MATTERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2019, the Chair recognizes the gentleman from Kentucky (Mr. YARMUTH) for 30 minutes.

GENERAL LEAVE

Mr. YARMUTH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and insert extraneous material on my Special Order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. YARMUTH. Madam Speaker, a week from today, we will hear about the state of our Union from an impeached President who has repeatedly shown a complete disregard for the principles on which that union was founded.

President Trump has brazenly trampled the constitutional boundaries of executive power, damaging the foundation of our democracy. He shamelessly betrayed his oath of office by putting his own corrupt agenda before our national security.

His withholding of aid to Ukraine has dominated the news, but the administration's willingness to pervert our laws for President Trump's ego, personal vendettas, and political gains goes much deeper.

Earlier this month, the nonpartisan U.S. Government Accountability Office, or GAO, issued a legal opinion stating that Trump's Office of Management and Budget, OMB, violated Federal law, specifically the Impoundment Control Act of 1974, by withholding foreign aid.

Madam Speaker, I will include that opinion in the RECORD.

□ 1845

As chairman of the Budget Committee, which has jurisdiction over this law, it is my responsibility to provide the full story to the American people and to Members of Congress so that we can all fully understand what is happening to our government.

To start with, this violation of Federal law was not an innocent mistake. Withholding Ukrainian aid was an intentional and brazen abuse of power. This quid pro quo is the most egregious example that we know of, but the Budget Committee has been concerned by OMB's questionable behavior and apparent violations of the Impoundment Control Act for some time.

A deeper look clearly reveals how methodically the President and his administration have been circumventing our laws to advance their authoritarian view of executive power. To understand their scheme, we must understand the law they tried to secretly dodge and ultimately broke, the Impoundment Control Act.

The U.S. Constitution grants Congress the power to appropriate our tax dollars, while the President's administration carries out these spending decisions. It is a simple but incredibly important check on executive power.

In 1974, Congress passed the Impoundment Control Act, the ICA, in response to another law-breaking President, President Nixon. By refusing to spend congressionally appropriated funds for programs he opposed, such as funding for clean drinking water, Nixon's administration was impounding funds.

An impoundment means any action or inaction that prevents Federal funds

from being obligated or spent, either temporarily or permanently.

By passing the ICA, Congress reasserted its constitutional power of the purse by establishing procedures to block the President and other government officials from substituting their own funding decisions for those of Congress.

It created two pathways the executive branch can use to reduce, delay, or eliminate congressionally appropriated funding: They can propose to cancel funding, which is known as a rescission, or delay funding, which is a deferral, but both must meet strict requirements.

For example, if the President wants to eliminate funding for a specific program, he must first secure congressional approval to cancel that funding. The ICA requires that the President send a special message to Congress identifying the amount of, the reasons for, and the effects of a proposed rescission.

After submitting this special message, the President can withhold those funds for up to 45 legislative session days while Congress considers the request. But if Congress does not pass a law to cancel those funds within that 45-day period, those funds must be released. So even with this process, the President cannot cancel funding without Congress' explicit approval.

Also, the President cannot use the rescissions process to run out the fiscal year clock, in other words, to withhold funds for so long that they can no longer be used. We will come back to rescission, so keep this in mind.

Now, the ICA defines a deferral as withholding, delaying, or effectively preventing congressionally approved funds from being obligated or spent, either through executive action or inaction. But here is the catch. There are only three narrow circumstances in which the President can propose a deferral: to provide for contingencies, to achieve budgetary savings through approved operational efficiency, and as specifically provided by law.

Notice that policy reasons is not one of the three.

As with rescissions, the ICA requires that the President send a special message to Congress identifying how much they want to defer, why, and for how long. However, a proposed deferral may not extend beyond the end of the fiscal year. Only once Congress receives this special message can the President withhold those funds.

Again, the President cannot withhold funds for so long that they can no longer be used.

I hope that didn't make anyone's eyes glaze over, but the details of the Impoundment Control Act are at the heart of this administration's lack of respect for our Nation's separation of powers and rule of law.

Today, nearly 46 years after the ICA became law, Congress confronts a President and an administration eager to blow past the boundaries of execu-

tive budgetary power and co-opt Congress' power of the purse for the President's personal gain.

This brings us to 2018 and one the first red flags. My committee's concerns about ICA violations under the Trump administration actually started in 2018, when I was serving as the committee's ranking member.

Multiple reports warned that the Trump administration was considering a late-in-the-year rescissions package that would have effectively started that 45-day clock close to the end of the fiscal year. As you recall, the ICA requires congressional approval before funds can be canceled. By withholding funds through their expiration date, President Trump and OMB aimed to game the system and create a backdoor rescission. The White House had to abandon this scheme in the face of bipartisan condemnation.

To send a clear message to the White House and to put an end to any future attempts at backdoor rescissions, then-Chairman WOMACK and I, in October of 2018, requested GAO's legal opinion on whether an ill-timed rescission package from the White House would violate the ICA.

Madam Speaker, I include in the RECORD the letter that then-Chairman WOMACK and I sent to the GAO.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC 20515, October 31, 2018.

Hon. GENE L. DODARO,
Comptroller General, U.S. Government Accountability Office, Washington, DC.

DEAR MR. DODARO: We are requesting clarification in the form of a legal opinion on the issue of proposed rescissions of funds submitted close to their expiration date. It is important that Congress remain at the center of the decision of whether to withhold funds. To that end Congress should have adequate time to receive, consider, and act on any rescission message sent by the President.

Under the Impoundment Control Act of 1974 (ICA), the President may submit a special message proposing the rescission of budget authority and may withhold funds from obligation for a period of 45 calendar days of continuous session following transmission of the special message. Public Law No. 93-344, as amended, 1012; 2 U.S.C. §683. If Congress does not pass a rescission bill within the 45-day period, the ICA requires that the funds be released for obligation. Specifically, section 1012(b) states: "Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved."

As you know, the rescission process has been used this year for the first time since the Clinton Administration. Naturally, some questions have arisen. One question of particular importance to Congress concerns whether the executive can use the rescission process to withhold funds from obligation for the duration of the 45-day period, even if the funds expire before the end of that period.

GAO has never issued an opinion on the legality of withholding funds in this circumstance. We now request GAO's legal opinion regarding whether the ICA allows

funds to be withheld from obligation in this situation.

Thank you for your attention to this matter.

Sincerely,

STEVE WOMACK,
Chairman,
JOHN YARMUTH,
Ranking Member.

Mr. YARMUTH. In December 2018, GAO issued a decision, which I will include in the RECORD, concluding that, while the ICA does, under limited circumstances, allow the President to withhold money for up to 45 congressional session days, the President cannot freeze the money for so long that it can no longer be used.

GAO confirmed Congress' constitutional role, saying: "A withholding of this nature would be an aversion both to the constitutional process for enacting Federal law and to Congress' constitutional power of the purse, for the President would preclude the obligation of budget authority Congress has already enacted and did not rescind."

Mr. WOMACK and I both welcomed this opinion from GAO, calling it an important confirmation of Congress' constitutional authority over funding decisions.

While GAO was deliberating, OMB submitted their views, as is customary. A letter from OMB's general counsel seems to assert the belief that the President can do whatever he wants, that he doesn't have to respect our separation of powers or the will of Congress to cancel funds he doesn't want to spend, that he is above the law.

As GAO stated in their opinion: "The President has no unilateral authority to withhold funds from obligation."

"The President cannot rely on the authority in the ICA to withhold amounts from obligation, while simultaneously disregarding the ICA's limitations."

This deliberate disregard for our laws undermines our democracy. The executive branch is not a monarchy, but this attitude is a pernicious problem with this administration.

Less than a year later, in August of 2019, a document, a letter apportionment from OMB, was leaked. An apportionment is a legally binding budget document used by OMB to set the rate at which an agency spends its funds over the course of a fiscal year.

For example, we wouldn't want an agency to come to Congress in March saying that it has already spent its entire annual operating budget and must cease operations unless Congress provides more money. To prevent this, OMB apportions agencies money. However, this leaked letter from August 3, 2019, raised multiple red flags.

First, this letter apportionment, sent to officials at the State Department and the U.S. Agency for International Development, put an abrupt freeze on billions in foreign aid less than 60 days before the end of the fiscal year.

OMB put a legally binding hold on 15 key accounts that covered a spectrum of assistance, international control,

peacekeeping operations, global health programs, foreign military financing programs, and more.

Similar to 2018, reports were circulating that President Trump planned a late-in-the-year rescissions package, despite GAO's decision just 9 months earlier rebuking the tactic as an end run around Congress.

On August 19, Senate Budget Committee Ranking Member SANDERS and I wrote a letter to President Trump's Acting Chief of Staff and OMB Director Mick Mulvaney urging him to follow the law and to respect Congress' constitutional authority.

Second red flag, this apportionment was signed by Michael Duffey, an administration political appointee. Since OMB's inception, career officials with knowledge and expertise of the apportionment process and impoundment law, not political appointees, have signed these highly technical budget documents. This means that OMB took the unprecedented step of stripping career officials of their normal role in the apportionment process and, instead, gave this responsibility to someone who had been appointed by the President. This was, to say the least, suspicious.

Third red flag, under current law, apportionments are not public documents. OMB sent no special message to Congress to flag this hold on foreign aid, as the law requires; they kept Congress in the dark. If the document had not been leaked, Congress might not have ever discovered this suspicious funding freeze.

What else were they hiding?

While this leaked August 3 letter apportionment is what first alerted Congress to the President's willingness to break the law, at that time we could not have guessed how nefarious it really was. A few weeks later, the Budget Committee would uncover a pattern of abuse of the apportionment process, our separation of powers, and current law.

As part of our investigation, my committee asked OMB for documents and answers detailing their involvement in the withholding of foreign aid. After review of the materials provided to us, it was clear that this was an intentional and willful abuse of power.

To lay this out as plainly as I can, I will outline what happened chronologically.

It all starts on May 23, 2019, when the Pentagon sent a letter to Congress certifying that the Government of Ukraine had met Congress' anticorruption requirements and was, therefore, eligible to receive the critical security assistance it needed. Most importantly, the Pentagon notified lawmakers of its plans to spend the money.

Keep in mind that this is critical funding Ukraine needs to protect itself from Russia, our shared adversary.

The first sign of trouble came almost a month later, on June 19, 2019. In response to our request for answers, OMB

asserts that this is when they first reach out to the Department of Defense to ask about the Ukraine Security Assistance Initiative, or USAI, funds.

Mark Sandy, an Afghanistan veteran and top career OMB official who is responsible for managing the flow of Pentagon funds, testified that OMB officials were told the President wanted the Ukraine aid paused, but he didn't understand why.

So, while reaching out to the Pentagon to learn more about the aid package, he also repeatedly pressed Mr. Duffey about why President Trump imposed the hold. But Mr. Sandy didn't get a clear answer. He testified that Mr. Duffey "didn't provide an explicit response on the reason. He simply said, 'We need to let the hold take place'—and I'm paraphrasing here—and then revisit this issue with the President.'"

Just about a week later, on June 27, Mick Mulvaney was flying on Air Force One with President Trump when he fired off a quick email to an aide back in Washington. The email said: "I'm just trying to tie up some loose ends. Did we ever find out about the money for Ukraine and whether we can hold it back?"

The aide, Robert Blair, replied that, while they could carry out the President's request, the move to withhold aid passed in a bipartisan spending deal would not go over well with Congress. "Expect Congress to become unhinged," he wrote back.

I don't know about unhinged, but Congress was not going to let this abuse of executive overreach go unanswered.

These early conversations are critical to our timeline because they show that this administration's abuse of our laws and plans to blackmail a foreign nation into helping President Trump cheat our elections was premeditated.

President Trump, Mulvaney, and Duffey abused OMB's authority to withhold Ukraine security assistance at the same time President Trump directed his personal lawyer, Rudy Giuliani, and his associates to solicit foreign interference in our elections.

In July, they set their plans in motion. During an interagency meeting on July 18, an OMB staffer relayed President Trump's order to freeze all Ukraine assistance to the State Department and the Pentagon. This stunned and infuriated our own top Ukrainian diplomats, who understood the necessity of strong American support for Ukraine in their fight against Russia. Later that day, the House Foreign Affairs Committee was warned about the hold by administration sources, urging them to investigate.

But the bottom line was that there was no legal way for President Trump to withhold aid to Ukraine without Congress' approval. Since it was a politically motivated hold, it would not even qualify for a deferral under the ICA. If the President was going to hold this aid hostage, he had to find a way to go behind Congress' back and se-

cretly impound hundreds of millions of taxpayer dollars.

Mr. Sandy testified that, on July 19, Mr. Duffey proposed using the apportionment process to implement the hold, that is, to use a legally binding budget document to withhold security assistance to Ukraine.

Mr. Sandy also testified that, while approving apportionment schedules for agencies is routine, attaching a footnote to block spending was so unusual he did not recall another event like it in his 12 years of service at OMB.

□ 1900

There is a reason for that. It could be considered a violation of the Impoundment Control Act.

As you will recall, the ICA prohibits the President and his administration from withholding aid unless it is done under the authorities of the Impoundment Control Act, which require notification to Congress, which OMB did not want to do.

A week later, on July 25, President Trump had his now-infamous call with Ukrainian President Zelensky, where he asked a foreign government to dig up dirt on a political rival. Just 90 minutes after the President hung up the phone, Mr. Duffey emailed the Pentagon, putting a hold on the Ukraine aid.

In his email, which was only obtained under the Freedom of Information Act, Mr. Duffey shared OMB's plan to "formalize the pause with an apportionment footnote" that would come later that day. In another red flag, Mr. Duffey asked Pentagon officials to keep this "hold" decision as secret as possible.

According to documents obtained by the House Budget Committee, at 6:44 p.m. Eastern time, just hours after the "perfect call," Mr. Sandy signed an apportionment that officially imposed what OMB claimed at the time to be a "brief pause" in USAI funds.

OMB inserted a footnote into the apportionment that froze all remaining USAI funding until August 5. The footnote states that the funds are being held "to allow for an interagency process to determine the best use of such funds," but also that "DOD may continue its planning and casework for the initiative during this period."

Why would OMB allow the Pentagon to continue working on current plans and casework if they were claiming they needed to freeze the funds to review those same plans and casework? Because this hold was never about a policy review. This hold was this administration's attempt to get around Congress and secretly undermine the law, to freeze foreign aid so that they could use it to pressure Ukraine into helping President Trump cheat to win reelection in 2020.

It is the same hold that Mulvaney referenced in his June email to Mr. Blair while flying on Air Force One with the President, and it is the same hold that would ultimately lead to grounds for impeachment.

The July 25 apportionment would be the last one Mr. Sandy would sign. The White House needed to make sure the aid remained frozen while they kept up their pressure campaign on President Zelensky. But OMB career officials were becoming uneasy about the freeze and the illegality of using apportionments to create secret impoundments.

In an unprecedented move, Mr. Sandy was stripped of his authority to oversee the management of Ukraine aid, and the apportionment authority was transferred to President Trump's political appointee, Mr. Duffey.

Remember that leaked letter apportionment that raised red flags? When that apportionment leaked in early August, Congress still didn't know about the plot to withhold the Pentagon's \$250 million in Ukraine aid. So here we have 15 State and USAID foreign aid accounts on hold, one of which includes \$26.5 million in Foreign Military Financing funds for—you guessed it—Ukraine. On top of that, this apportionment is the first one with Mr. Duffey's signature.

August was a busy time for Mr. Duffey. Someone who had never before signed apportionment documents started signing all the apportionment documents in both the National Security Division and the International Affairs Division instead of career officials. On August 6, Mr. Duffey signed the first extension of what was supposed to be the brief withholding of the Pentagon's USAI funds, using another footnote to freeze the funds until August 12.

Separately, on August 9, our documents show Mr. Duffey signed another apportionment affecting the State Department and USAID foreign funds included in the leaked apportionment. This time, OMB said the agencies are only allowed to spend 2 percent of the funds each day, and it withholds the rest from the agencies. That is not a programmatic, funds management, or even a policy decision.

The State Department doesn't send a couple thousand dollars to support international peacekeeping missions one day and then a couple thousand dollars to support international narcotics control the next. That is not how it works.

Limiting agencies to such a minuscule amount effectively prevented these funds from being spent at all, while at the same time, the apportionment continued to withhold the majority of remaining funds. It was another backdoor attempt to freeze funding and possibly rescind it completely by running out the clock.

On August 19, Senator SANDERS and I sent our letter to OMB and the White House, calling on the administration to stop impounding funds, to respect GAO's legal opinion from the previous December, stating that a late-in-the-year rescission request that prevents congressional action and withholds funds until they can no longer be used would violate the ICA.

Madam Speaker, I include in the RECORD the letter Senator SANDERS and I sent to Director Mulvaney.

CONGRESS OF THE UNITED STATES,
Washington, DC, August 19 2019.

Hon. MICK MULVANEY,
Director, Office of Management and Budget,
Washington, DC.

DEAR DIRECTOR MULVANEY: We write to express our profound concern regarding the Administration's reported plan to submit a rescission request to the Congress just a few weeks before the end of the fiscal year.

Under the Impoundment Control Act of 1974 (ICA), the President may submit a special message proposing the rescission of budget authority and may withhold funds from obligation for a period of 45 calendar days of continuous session following transmission of the special message. In keeping with Congress's constitutional power of the purse, however, such funding must be released absent approval by Congress within the 45-day period. Specifically, section 1012(b) of the ICA states:

Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved.

Submitting a rescissions request and withholding funds from obligation this late in the fiscal year could result in funding being withheld through its expiration date. In December 2018, at the request of the House Budget Committee, the U.S. Government Accountability Office (GAO) issued a legal opinion that addressed this circumstance. GAO found that "the ICA does not permit the withholding of funds through their date of expiration." Further, GAO determined that absent Congressional action to rescind the funds,

amounts proposed for rescission must be made available for prudent obligation before the amounts expire, even where the 45-day period for congressional consideration provided in the ICA approaches or spans the date on which funds would expire: the requirement to make amounts available for obligation in this situation prevails over the privilege to temporarily withhold the amounts.

The authority provided by the ICA to the Executive Branch to withhold funds temporarily is necessarily limited. The GAO opinion states:

It would be an abuse of this limited authority and an interference with Congress's constitutional prerogatives if a President were to time the withholding of expiring budget authority to effectively alter the time period that the budget authority is available for obligation from the time period established by Congress in duly enacted appropriations legislation.

As the chairman and ranking member of the respective House and Senate committees with jurisdiction over the Impoundment Control Act, we affirm our strong agreement with the legal analysis and conclusions reached by GAO. We strongly urge the Administration to refrain from sending a rescission message to the Congress; however, in the event the Administration submits such a message, it must take measures to ensure that the affected funds will be prudently obligated in the event the Congress does not approve the rescission, as required by law. To withhold these funds until they can no longer be prudently obligated or until they expire, in the absence of Congressional approval of the rescission, would violate the

ICA and flout an important constitutional check. We trust that you will comply with the law and respect the constitutional role of the Congress to remain at the center of funding decisions.

Thank you for your attention to these concerns.

Sincerely,

JOHN YARMUTH,
Chairman, House Committee on the Budget.

BERNARD SANDERS,
Ranking Member, Senate Committee on the Budget.

Mr. YARMUTH. At this time, we did not understand that the President and OMB actually had learned from their 2018 attempts to circumvent Congress. But they learned the wrong lesson. Now, they were just trying to bypass Congress completely.

By the second week of August, Mr. Duffey was issuing holds on USAI funds every couple of days to block the Pentagon from sending aid. OMB was doing what it could to keep the President's hold on Ukraine aid active, but on August 28, a senior administration official told Politico about the hold on USAI funds. The President's scheme was unraveling.

On August 29, our documents show Mr. Duffey signed another letter apportionment releasing 25 percent of the remaining State Department and USAID funds each Sunday in September. With this latest trick, it was clear these agencies were not going to be able to spend all the funds Congress appropriated before they expired on September 30. And in fact, they didn't, which was apparently OMB's intention all along.

Meanwhile, Mr. Duffey was still signing apportionments to freeze USAI funds until September 12. During this time, DOD warned that OMB's ongoing hold on Ukraine assistance would prevent them from using all the funds Congress appropriated before they expired on September 30. And, of course, DOD was right.

On September 18, Chairwoman LOWEY and I wrote to OMB, expressing deep concerns about OMB's escalating abuses of its apportionment authority and its blatant attempts to undermine Congress' power of the purse. Basically, we told them to stop their pretty obvious attempts to evade, invalidate, and violate congressional appropriations laws and the ICA.

Madam Speaker, I include in the RECORD that letter of September 18.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, September 18, 2019.

Hon. MICK MULVANEY,
Acting Chief of Staff, The White House,
Washington, DC.

Hon. RUSSELL VOUGHT,
Acting Director, Office of Management and Budget, Washington, DC.

DEAR MR. MULVANEY AND MR. VOUGHT: We write to express our deep concerns about the Office of Management and Budget's (OMB's) increasingly dubious and politicized applications of budget law, as well as the role they have played in impeding other agencies' ability to use their enacted appropriations.

OMB's actions have already damaged important government programs, diminished our country's security and standing abroad, and if continued, threaten to permanently undermine fundamental checks and balances in our constitutional republic.

Specifically, during the last year, OMB has demonstrated a growing willingness to abuse its Presidentially-delegated apportionment authorities and impermissibly disrupt the balance of powers between the branches. The agency's apportionment authorities may not be used as a form of executive control or influence over agency functions. Rather, they may only be exercised in the manner and for the purposes prescribed in the Antideficiency Act (ADA) and in compliance with other appropriations and budget laws, including title X of the Congressional Budget and Impoundment Control Act of 1974 (Impoundment Control Act). None of those laws give the Executive Branch the unilateral power to invalidate duly enacted statutes through the apportionment process.

Nevertheless, OMB continues to abuse those authorities, and the apportionment process, to flout the Constitution's assignment of the power of the purse to Congress. OMB's inexplicable and unprecedented apportionment actions have withheld critical funding provided for the Department of State and United States Agency for International Development (USAID) in a manner inconsistent with long-standing policies and procedures. Those OMB actions are deleteriously impacting the prudent obligation of foreign assistance intended to support U.S. interests, and are hindering the efficient and effective management of U.S. funds and programs. Indeed, those actions seem to be specifically designed to obstruct the agencies' ability to use their appropriations for their Congressionally-approved purposes in the final weeks before they expire. We have serious legal concerns that those actions will result in *de facto* impoundments, and we are deeply troubled that this may be OMB's unstated goal.

The apportionment actions at issue also undermine important programs and policies that Congress funded, to among other things:

Fulfill U.S. treaty obligations and support the nation's international allies and partners;

Counter Russian aggression and Chinese influence across the globe;

Respond to humanitarian crises all over the world, including in Venezuela, Syria, and Burma;

Counter violent extremism in the Sahel, Yemen, and elsewhere; and

Enable important initiatives such as the Indo-Pacific Strategy and Power Africa.

Withholding funds through the apportionment process until they can no longer be prudently obligated is a back-door rescission without Congressional approval. A year ago, OMB retreated from its plan to illegally impound State Department and USAID appropriations through a cynically-timed rescissions proposal—a misguided scheme that OMB threatened again this year, even after clear warning from the Government Accountability Office (GAO) that such attempts were in violation of the Impoundment Control Act. We are concerned that OMB's intransigence on these issues has led it to try to accomplish through the apportionment process what it had hoped to accomplish with a rescissions proposal.

OMB has continued to push this unlawful agenda and perniciously broadened its sights to target funding provided by the Congress to the Department of Defense to counter Russian aggression. In particular, OMB withheld funding provided for the Ukraine Security Assistance Initiative, a vital form of Congressionally-directed assistance that

helps Ukraine defend its sovereign territory. As with the State and USAID funding, this funding also expires at the end of this month, and recent estimates indicate that at least tens of millions—and potentially over one hundred million—in funds will expire as a result of OMB's attempts to stifle the Department of Defense's access to this lawfully provided funding. This apparent impoundment has interrupted the Defense Department's work on security programs that have been in place with a partner nation for years.

OMB also took the unusual and perhaps unprecedented step of delegating the authority to execute these apportionments to a political appointee, in lieu of career civil servants who have historically been the designated officials responsible for overseeing and executing these technical budget documents. More than that, the apportionment actions taken by this political appointee have no justifiable policy, program, or funds management rationale.

We are deeply troubled by this pattern of OMB interference with agencies' use of appropriations for authorized purposes. All the funding for the programs and policies mentioned above was negotiated in good faith between, and subsequently approved by, bipartisan majorities in the Congress, and was signed into law by President Trump. Moreover, we are deeply concerned that OMB has intended that these actions take place without Congressional oversight or transparency to the public, given that OMB has been unwilling to provide apportionments even pursuant to written requests by our committees.

We assure you that our committees will remain focused on OMB's use of apportionments and that we will respond forcefully to Executive Branch actions that seek to override the Congress' most fundamental constitutional power. We are actively pursuing a range of options to ensure that OMB is held accountable for any improper apportionment actions and to ensure that the Congress remains at the center of funding decisions. In the meantime, we urge you in the strongest possible terms to return OMB to its function of administering enacted laws, to immediately release for use all remaining expiring funds, and to cease further attempts to evade and invalidate the laws passed by the Congress. We sincerely hope you can be successful in restoring the trust that OMB has historically held as a valuable institution and good steward of federal funding.

JOHN A. YARMUTH,
Chairman, House Committee on the Budget.

NITA M. LOWEY,
Chairwoman, House Committee on Appropriations.

Mr. YARMUTH. But then, Madam Speaker, the whistleblower report was made public. The report outlined how President Trump instructed his administration and OMB officials to put a hold on almost \$400 million in Ukraine security assistance ahead of his July 25 phone call with President Zelensky. The President abused his power and betrayed the oath he took before the American people to defend our national security and honor our Constitution.

As the plan unraveled, the picture became clear. The administration was abusing the apportionment process to secretly and illegally impound funding provided by Congress to protect our national security, to use this leverage against a foreign nation to help the

President cheat our elections, and they couldn't hide it any longer.

On September 24, Speaker PELOSI announced a formal impeachment inquiry into the shady dealings of the Trump administration.

Madam Speaker, I include in the RECORD a letter of September 27 that Chairwoman LOWEY and I sent to OMB, seeking answers and documents related to the withholding of the Ukraine aid, State and USAID funds, and abuse of the apportionment process.

CONGRESS OF THE UNITED STATES,

Washington, DC, September 27, 2019.

Hon. MICK MULVANEY,
Acting Chief of Staff, The White House, Washington, DC.

Hon. RUSSELL VOUGHT,
Acting Director, Office of Management and Budget, Washington, DC.

DEAR MR. MULVANEY AND MR. VOUGHT:

The Committees on the Budget and Appropriations are the primary committees charged with overseeing and writing federal budget and appropriation laws. Consistent with our authority, we are continuing our efforts in the 116th Congress to pursue productive improvements and reforms to the laws and authorities governing federal financial management to ensure that the Congress remains at the center of funding decisions. Specifically, our committees are considering legislative proposals related to the apportionment process and the withholding of funds, including in the context of the Impoundment Control Act of 1974 (ICA) and the annual appropriations acts.

As we stated in our September 18th letter, we have serious concerns that recent apportionment actions by the Office of Management and Budget (OMB) to withhold military aid for Ukraine and other foreign assistance constitute unlawful impoundments in violation of the ICA and are an abuse of the authority provided to the President to apportion appropriations. In the short time since we sent that letter, additional reports have emerged detailing the circumstances surrounding the withholding of funding for Ukraine and OMB's involvement in that withholding.

According to those reports, at least a week prior to a July 25th phone call between President Trump and Ukrainian President Zelenskyy, President Trump told Mr. Mulvaney to withhold almost \$400 million in military aid and foreign assistance for Ukraine, and "[o]fficials at the Office of Management and Budget relayed Trump's order to the State Department and the Pentagon during an interagency meeting in mid-July." The reporting also indicates that "[t]here was concern within the administration that if they did not spend the money [appropriated for Ukraine], they would run afoul of the law" and that, eventually, Mr. Vought released the money.

On Tuesday, September 24, 2019, at the United Nations General Assembly, the President confirmed the withholding and added his reasoning, stating:

As far as withholding funds, those funds were paid. They were fully paid. But my complaint has always been—and I'd withhold again, and I'll continue to withhold until such time as Europe and other nations contribute to Ukraine. Because they're not doing it.

The recently declassified complaint submitted to the Office of the Inspector General of the Intelligence Community (ICIG) on Monday, August 12, 2019 provided similar confirmation of OMB's withholding of appropriated funding for Ukraine. The complaint, which appeared credible according to a letter from the ICIG, stated among other things:

On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President “earlier that month” had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.

As reports continue to emerge, we have deepening concerns that OMB continues to demonstrate a pattern of impeding agencies’ ability to use their enacted appropriations; that recent apportionment actions taken by OMB to withhold military aid and foreign assistance funding administered by the Department of Defense, Department of State, and U.S. Agency for International Development constitute unlawful impoundments; and that OMB took the unusual and seemingly unprecedented step of delegating the authority to execute these apportionments to a political appointee, in lieu of career civil servants who have historically been the designated officials responsible for overseeing and executing these technical budget documents. These actions have collectively undermined the longstanding application and predictability of federal funds management processes and require closer examination by our committees to inform appropriate legislative responses and reforms.

Therefore, to support our committees’ efforts, we request that OMB produce written responses to the committees, no later than Tuesday, October 1, 2019, to the following questions:

(1) a. When did OMB first instruct agencies to withhold assistance for Ukraine, including amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019 for the Ukraine Security Assistance Initiative and any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program?

b. In which Treasury Appropriation Fund Symbol(s) (TAFS or account) were amounts withheld?

c. When was the first apportionment action executed for (each of) the relevant account(s) to withhold those funds?

d. Were the withheld funds made available for immediate use by the agencies during fiscal year 2019, and if so, when?

(2) a. When did OMB first instruct agencies to withhold funding in the accounts referenced in the letter apportionment effective as of 11:59 p.m. Eastern Daylight Time on Saturday, August 3, 2019 (“August 3, 2019 Letter Apportionment”)?

b. When were the first apportionment actions executed to withhold those funds?

c. Were the withheld funds made available for immediate use by the agencies during fiscal year 2019, and if so, when?

No later than Tuesday, October 1, 2019, we also request that OMB produce the following documentation to the committees:

(3) All apportionments or reapportionments for fiscal year 2019 that were executed in the last quarter of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for any applicable TAFS used for assistance for Ukraine or the Ukraine Security Assistance Initiative appropriation, including the Department of Defense, Operation and Maintenance, Defense-wide account, 97-0100/2019 and account(s) for any applicable amounts provided in other appro-

priation acts for the Foreign Military Financing Program.

(4) All apportionments and reapportionments for fiscal year 2019 that were executed in the last quarter of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for each TAFS referenced in the August 3, 2019 Letter Apportionment and any applicable child accounts.

Finally, we request that OMB produce documentation to the committees, no later than Friday, October 11, 2019, on the following:

(5) Documentation sufficient to show the obligational status of the relevant assistance funding to Ukraine by account, including all amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019 and any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program, as of June 30, 2019 and as of September 30, 2019, including the specific amounts that were (a) unobligated, (b) obligated but not expended, and (c) obligated and expended.

(6) Documentation sufficient to show:

a. when OMB first instructed agencies to withhold assistance for Ukraine, including amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019 and any applicable amounts provided in other appropriation acts for the Foreign Military Financing Program;

b. the amount of funding that was withheld from obligation, and in which account(s);

c. when the first apportionment action was executed to withhold those funds;

d. the period over which the funds were withheld;

e. whether the funds were, subsequent to those withholdings, made available for immediate use by the agencies during fiscal year 2019, and if so, when;

f. the factual, legal, and policy bases upon which these actions were taken; and

g. whether requests were made by the affected agencies to reapportion the funding at issue, or to alter the conditions of the apportionments in effect, and if so, whether those requests were granted.

(7) Documentation sufficient to show:

a. whether there was an “interagency process” related to the withholding or use of amounts appropriated in section 9013 of the Department of Defense Appropriations Act, 2019, and the basis for initiating such interagency process, including its stated purposes and goals;

b. what entities or agencies were involved in such interagency process;

c. when that process began; and

d. the conclusions reached through that process and when they were reached, including the outcomes of any interagency meetings that occurred on July 23, 2019 and July 26, 2019 related to the disposition of the funding.

(8) Documentation sufficient to show the obligational status of all amounts apportioned as unavailable in the August 3, 2019 Letter Apportionment. This documentation should show the status of those funds as of June 30, 2019 and as of September 30, 2019, and should show, at a minimum, the specific amounts by account that were (a) unobligated, (b) obligated but not expended, and (c) obligated and expended.

(9) Documentation sufficient to show:

a. when OMB first instructed agencies to withhold funding in the accounts referenced in the August 3, 2019 Letter Apportionment;

b. how much funding was withheld from obligation in each account, and over what period the amounts were withheld;

c. when the first apportionment actions were executed to withhold those funds;

d. whether the funds were, subsequent to those withholdings, made available for im-

mediate use by the agencies during fiscal year 2019, and if so, when;

e. the factual, legal, and policy bases upon which these actions were taken; and

f. whether requests were made by the affected agencies to reapportion the funding at issue, or to alter the conditions of the apportionments in effect, if any, and whether those requests were granted.

(10) Documentation sufficient to show the timeline and basis for the delegation of apportionment authority to the Associate Director for National Security Programs, any related delegation actions, and any other delegations of the apportionment authority to a political appointee during fiscal year 2019.

(11) All apportionments and reapportionments for fiscal year 2019 that were executed in the first three quarters of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for any applicable TAFS used for assistance for Ukraine or the Ukraine Security Assistance Initiative appropriation, including the Department of Defense, Operation and Maintenance, Defense-wide account, 97-0100/2019 and account(s) for any applicable amounts provided in appropriation acts for the Foreign Military Financing Program.

(12) All apportionments and reapportionments for fiscal year 2019 that were executed in the first three quarters of fiscal year 2019, including documentation of the approval date of each such apportionment action and any footnotes, for each TAFS referenced in the August 3, 2019 Letter Apportionment and any applicable child accounts.

Thank you for your prompt attention to this matter.

Sincerely,

JOHN A. YARMUTH,
Chairman, House Committee on the Budget.

NITA M. LOWEY,
Chairwoman, House Committee on Appropriations.

Mr. YARMUTH. Madam Speaker, while we received a partial production of documents from OMB, they left out large batches of requested materials.

Meanwhile, the House committees involved in the impeachment inquiry were getting completely stonewalled by the administration. If they did nothing wrong, why wouldn't they turn over documents or allow officials to testify? If the President could clear his name, don't you think he would have done it by now?

Instead, the President and his Chief of Staff, Mick Mulvaney, have gone on national television and confessed to the very thing Congress caught them doing. Mulvaney's response? “Get over it,” and, “We do it all the time.”

In December 2019, the House Budget Committee released a report, which I intend to put in the RECORD, outlining three main takeaways from the documents produced by OMB.

Number one, the timeline of actions taken by OMB, as seen in the provided apportionments, shows suspicious activity and document a pattern of abuse of the apportionment process, OMB's authority, and current law.

Number two, OMB took the seemingly unprecedented step of stripping career officials of their normal role in

the apportionment process and instead vested a political appointee with that authority.

And, three, OMB's actions hindered agencies' ability to prudently obligate funds by the end of the fiscal year, bypassing Congress and creating backdoor rescissions in violation of the ICA.

Weeks after our report was published, the House of Representatives impeached Donald J. Trump for abuse of power and obstruction of justice.

On January 16, 2020, GAO issued a legal opinion, stating that the actions taken by OMB to withhold foreign aid to Ukraine violated the ICA. The non-partisan watchdog even went so far to say: "OMB's assertions have no basis in law."

GAO found the White House's action to withhold security assistance funding constituted an illegal deferral of funding in violation of the ICA. The ICA permits deferrals only for very limited purposes and requires advanced congressional notification. But this was not just a notification violation. GAO determined that this deferral was prohibited under the ICA, period.

As GAO emphasized: "The ICA does not permit deferrals for policy reasons. . . . OMB's justification for the withholding falls squarely within the scope of an impermissible policy deferral."

So even if the President had notified Congress in advance of the deferral, it still would have been illegal.

The White House has taken a disturbing sense of pride in its obstruction of Congress so it is no surprise that they failed to fully cooperate with GAO as well. In its decision, GAO called out the Trump administration, stating: "We consider a reluctance to provide a fulsome response to have constitutional significance."

The House Budget Committee repeatedly warned the Trump administration about the ICA. The Department of Defense warned them. The State Department warned them. Even people in the Executive Office of the President called out this flagrant abuse of Federal law. But the President ignored the warnings.

Instead, he used the powers of his office to subvert our laws, solicit foreign interference to help him cheat in his next election, and then try to cover it all up.

While the House has taken action to show that no one, including the President, is above the law, OMB is still scheming. President Trump's administration continues to abuse its authority and infringe on Congress' power of the purse—for example, holding up disaster relief to Puerto Rico. I would wager it is because the President couldn't handle some criticism from one of their mayors. We shall see.

Last March, my colleagues and I wrote a letter to OMB, which I intend to put in the RECORD, calling out this administration for declaring bogus national emergencies to steal funds Congress appropriated for crucial military construction and counternarcotic ini-

tiatives to use for the President's border wall, another decision motivated by the President's political campaign and not taxpayer interests. There is more, I am sure, that we just don't know about yet, but we will find out.

In the face of this administration's clear and present threat to our democracy, we must defend Congress' constitutional authority, protect our separation of powers, and strengthen the ICA to prevent such unilateral actions.

In March, I will introduce legislation that will protect Congress' power of the purse. It will promote transparency of the executive branch to limit abuse and ensure no President can hide lawbreaking from the American people again. It will add teeth to budget law by creating significant deterrents, including administrative discipline, to create more accountability for executive branch officials so they won't break the law, and it will ensure Congress remains front and center in determining whether emergency declarations made by the President and the related shifts in funding are justified.

Look, this is a lot of information, and I am normally not one to give long statements, but in the face of such horrendous attacks on our democracy, I wanted it all on the RECORD.

I am also submitting every letter I referenced into the CONGRESSIONAL RECORD, as well. As chairman of the House Budget Committee, I felt it was my responsibility.

It is my hope that these facts help expose this administration's systemic lawbreaking because if they get away with this and Congress does not fight back, it will not stop. We all know that.

He could attack specific communities by withholding funds that support their healthcare. He could retaliate against Senators for their votes by freezing Federal investments in their States. He could punish States that he views as unsupportive of his election by withholding the infrastructure funds.

If we don't stop him, President Trump will use our taxpayer dollars to punish political adversaries. That creates a destructive precedent for other Presidents who follow.

I implore our Republican colleagues to join us in this effort to uphold the oath we all swore and to make it unequivocally clear that, in the United States of America, no one is above the law.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

REVIEWING INHERITED IMMIGRATION CRISIS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2019, the Chair recognizes the gentleman from Wisconsin (Mr. GROTHMAN) for 30 minutes.

Mr. GROTHMAN. Madam Speaker, it appears we are at least in the final 2 weeks of this impeachment journey, and, therefore, it is time to begin to look at the issues that have been ignored or kept out of the newspaper for the last few months, which I think is quite frankly one of the reasons why we have had this impeachment.

I am going to address what progress has been made on these issues, largely President Trump making the progress himself without any help from Congress, and then address what we should do in the next few months prior to the next election.

I think the biggest crisis for the country that President Trump inherited was the immigration crisis, and President Trump has had several successes here on his own.

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He has reduced the number of people placed in the United States from in May, close to 100,000 people by the Border Patrol, certainly, over 90,000 by the Border Patrol and probably another 10 to 12,000 people sneaking in the country without being processed at that time, to a position where, last month, the Border Patrol probably placed under 2,000 people in the United States.

First of all, it is important to review what President Trump has done. He has begun what we would call a migrant protection protocol, in which Mexico is holding asylum seekers on their side of the border. They have agreed to hold anybody who is Spanish-speaking, and recently, in an unpublicized success, has begun a program holding Brazilians who are trying to get in this country as well.

They also have an asylum cooperative agreement in which Guatemala is holding asylum seekers who are coming from other Central American countries without moving into the United States.

I will point out something that should be obvious. If you are looking for asylum, in other words, to get away from danger in your home country, you shouldn't necessarily have to come to the United States. If you are an asylum seeker in Honduras or El Salvador, for example, and you are coming north, and you are in danger in your home country, it would be enough to stop in Guatemala. You do not have to come here.

In addition, we have begun an interior reparation initiative for people from Mexico trying to come here. Normally, in order to try to come here, you have to deal with the Mexican drug cartels. By the United States or Mexico repatriating people in Central Mexico, first of all, they are in many cases, in a more prosperous part of Mexico and, secondly, are not being dealt with by the drug cartels. And finally, you are a little bit further away from the border, which is something we should do in the first place.

The next thing President Trump has done is he has completed 110 miles of